

In The Name Of Allah, The Beneficent, The Merciful

DATED 2016

[REDACTED]
as Party A and

[REDACTED]
as Party B

MASTER MURABAHA AGREEMENT

**This document is based on the draft prepared by the
International Islamic Financial Market ("IIFM").**

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THIS MASTER MURABAHA AGREEMENT is dated
BETWEEN:

and made BY AND

- (1) [REDACTED]
[REDACTED]
[REDACTED] (the "**Party A**"); and
- (2) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (the "**Party B**"), each a "**Party**" and together the "**Parties**".

Background

- (A) The Parties wish, from time to time, to enter into a murabaha arrangement whereby one Party shall offer to purchase, and the other Party shall sell certain Commodities on immediate delivery and deferred payment terms by way of a murabaha contract (a "**Murabaha Contract**").
- (B) Each Murabaha Contract shall be governed by the terms set out herein, which includes the schedules as applied to each Murabaha Contract and executed by the Parties (the "**Schedules**").
- (C) In relation to the arrangements regarding a particular Murabaha Contract, a Party may wish to appoint the other Party as:
- (a) its agent to buy Commodities from the Supplier and which are to be used in the particular Murabaha Contract; or
 - (b) its agent to sell Commodities that it has purchased under a Murabaha Contract to a third party.

IT IS AGREED as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions In this Agreement:

"**Acceptance Confirmation**" means a confirmation to be sent by Party B to Party A confirming the terms contained in an Offer Confirmation, substantially in the form set out in Schedule 3 (*Form Of Acceptance Confirmation*).

"**Acknowledgement**" means the acknowledgement, substantially in the form set out in Part II of Schedule 1 (*Form Of Purchase Instruction Confirmation and Acknowledgement*) to be sent by Party B to Party A acknowledging its undertaking to purchase the Commodities from Party A.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Business Day**" [REDACTED]
[REDACTED]
[REDACTED]

"**Code**" means the US Internal Revenue Code of 1986.

"**Commodities**" means, the commodities listed in an Offer Confirmation and which may comprise any Shari'ah compliant metals, platinum group metals or other Shari'ah compliant commodities acceptable to both Parties and, in any event, will only include allocated commodities physically located outside of the European Union.

"**Confirmations**" means, with respect to any Murabaha Contract, collectively the Offer Confirmation and Acceptance Confirmation pertaining to such Murabaha Contract.

"**Cost Price**" means in relation to any Commodities, all sums payable to the Supplier by Party A (whether through its buying agent or as principal) for the purchase of the Commodities from the Supplier (including any Taxes levied on the Commodities (by the Supplier or otherwise)).

"**Default**" means an Event of Default or any event or circumstance specified in Clause 9 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under this Agreement or any combination of the foregoing) be an Event of Default.

"**Deferred Payment Date**" means, the date for payment of the Deferred Payment Price of a Murabaha Contract by Party B to Party A, as set out in the relevant Offer Confirmation.

"**Deferred Payment Price**" means the sum payable by Party B to Party A on the Deferred Payment Date and shall be the aggregate of the Cost Price and the Murabaha Profit for each Murabaha Contract and shall include all costs and expenses (other than delivery costs).

"**Dollars**" means the lawful currency of the United States of America.

"**DIFC**" means the Dubai International Financial Centre.

"**EC Treaty**" means the Maastricht Treaty dated 7 February 1992 which established the single currency in the European Union.

"**EUR**" or "**Euro**" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the EC Treaty.

"**Event of Default**" means any event or circumstance specified as such in Clause 9 (*Events of Default*).

"**FATCA Deduction**" means a deduction or withholding from a payment under this Agreement required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Material Adverse Effect" means a material adverse effect on, or a material adverse change in:

- (a) the business, operations, assets, prospects or condition (financial or otherwise) of a Party;
- (b) the ability of a Party to fully and promptly perform any of its material obligations under this Agreement; or
- (c) the legality, validity or enforceability of this Agreement or the rights or remedies of a Party hereunder.

"Murabaha Contract" means an individual contract made pursuant to Clause 2 (*Murabaha Contract*).

"Murabaha Profit" means the Deferred Payment Price less the Cost Price, agreed by the Parties with respect to the Murabaha Contract and as described in the Offer Confirmation relating to such Murabaha Contract.

"Offer Confirmation" means a confirmation to be sent by Party A to Party B detailing the agreed terms of a Murabaha Contract, substantially in the form set out in Schedule 2 (*Form Of Offer Confirmation*).

"Purchase Instruction Confirmation" means a notice, substantially in the form set out in Part I of Schedule 1 (*Form Of Purchase Instruction Confirmation and Acknowledgement*), to be sent by Party A to Party B where Party A confirms to Party B its intention to purchase Commodities (including the general description of the Commodities, the Cost Price and the proposed Settlement Date) and requests an undertaking from Party B that it shall purchase such Commodities from Party A.

"Relevant Interbank Market Rate" means:

- (a) if the relevant currency is Euro, then the Relevant Interbank Market Rate will be determined by Party B by reference to EURIBOR, i.e. the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period displayed on the appropriate page of the Reuters screen (or any successor page);
- (b) if the relevant currency is Dollars, then the Relevant Interbank Market Rate will be determined by Party B by reference to LIBOR, i.e. the British Bankers Association Interest Settlement Rate for the relevant currency and period appropriate page of the Reuters screen (or any successor page); or
- (c) if the relevant currency is a currency other than Euro or Dollars, then the Relevant Interbank Market Rate will be determined by Party B by reference to the relevant interbank market rate for the relevant currency and period displayed on the appropriate page of the Reuters screen (or any successor page),

and in each case, if the agreed page is replaced or is not available, Party B may specify another page or service displaying the appropriate rate after consultation with Party A, or if no adequate replacement page is available, Party B and Party A will consult to agree an alternative reference rate.

"Repeating Representations" means each of the representations set out in Clauses 7.1 (*Status*), 7.2 (*Binding obligations*), 7.3 (*Non-conflict with other obligations*), 7.4 (*Power and authority*), 7.5 (*Validity and admissibility in evidence*), 7.6 (*Governing law and enforcement*), 7.9 (*No default*), 7.10 (*No misleading information*), 7.11 (*Pari passu ranking*), 7.12 (*No proceedings pending or threatened*), 7.13 (*Compliance with Shari'ah*), 7.14 (*Non-Reliance*) and 7.15 (*No encumbrances*).

"Settlement Date" means the date on which the Murabaha Contract is concluded between Party A and Party B.

"Subsidiary" means, in relation to any person, an entity:

- (a) which is controlled, directly or indirectly, by that person;
- (b) where more than half the issued share capital (carrying voting rights exercisable at a general meeting of such entity) is owned, directly or indirectly, by that person; or
- (c) which is a Subsidiary of another Subsidiary of that person, and for this purpose, a company, partnership or other entity shall be treated as being "controlled" by that person if such person is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"Supplier" means the supplier from which the Commodities are purchased by Party B acting as buying agent for Party A.

"Tax" or **"Taxes"** means any present or future tax, zakat, levy, duty, charge, fee, deduction or withholding in the nature of tax, whatever called, wherever imposed, levied, collected, withheld or assessed and shall include, without limitation, any penalty or late payment amount payable in connection with any failure to pay or any delay in paying the same.

"Term" means the tenor of a Murabaha Contract, which shall for the avoidance of doubt, in each case commence on the Settlement Date and end on the Deferred Payment Date for that Murabaha Contract.

1.2 **Construction**

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) **"Party A"**, **"Party B"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iii) the **"equivalent"** on any given date in one currency (the **"first currency"**) of an amount denominated in another currency (the **"second currency"**) is a reference to the amount of the first currency which could be purchased with the amount of the second currency at the mid rate of (i) the rate of exchange quoted by Party A at or about 11.00 a.m. on such date for the purchase of the first currency with the second currency and (ii) the rate of exchange quoted by Party A at or about 11.00 a.m. on such date for the sale of the first currency for the second currency;
 - (iv) a **"law"** includes any law (including common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (v) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);
 - (vi) a provision of law is a reference to that provision as amended or reenacted;
 - (vii) a **"Clause"** or a **"Schedule"** is a reference to a clause or a schedule of this Agreement; and
 - (viii) a time of day is a reference to London time unless otherwise specified.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.
- (d) Unless expressly stated otherwise, any reference to **"currency"** includes any currency, other than AED (United Arab Emirates Dirham), as may be agreed between the Parties from time to time and the relevant abbreviating currency code used in this Agreement (including in the Schedules) shall correspond to the abbreviating currency code for the relevant currency set out in the currency ISO Standard (ISO 4217) as may be updated from time to time.

1.3 **Single Agreement**

Each Murabaha Contract is entered into in reliance on the fact that this Agreement and the Schedules applied to each Murabaha Contract form a single agreement between the Parties (collectively referred to as this "**Agreement**"), and the Parties would not otherwise enter into any Murabaha Contract.

1.4 **Third Party Rights**

- (a) Unless expressly provided to the contrary in this Agreement a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party.

2. **MURABAHA CONTRACT**

2.1 **Purchase of Commodities**

Prior to entering into a Murabaha Contract the Parties may, from time to time initiate telephonic discussions to agree the terms of a proposed Murabaha Contract whereby Party A shall sell Commodities to Party B on immediate delivery and deferred payment terms. Following such oral agreement Party A shall submit a Purchase Instruction Confirmation to Party B, confirming its intention to purchase Commodities and requesting Party B to undertake to buy such Commodities once purchased by (or on behalf of) Party A. If Party B accepts the terms of the Purchase Instruction Confirmation, Party B shall sign and return the Acknowledgement to Party A.

2.2 **Formation of a Murabaha Contract**

After Party A has purchased the Commodities and has physical or constructive possession of the Commodities, the Parties shall agree the terms and enter into a Murabaha Contract (orally, electronically or by other means) on the Settlement Date and the following terms shall be agreed in relation to each Murabaha Contract:

- (a) a general description of the Commodities;
- (b) the Cost Price;
- (c) the Settlement Date;
- (d) the agreed Deferred Payment Price (including the Murabaha Profit element);
- (e) the agreed Deferred Payment Date; and
- (f) the agreed settlement instructions.

The terms of the Murabaha Contract shall be confirmed by sending an Offer Confirmation and Acceptance Confirmation.

2.3 **Transaction Details Confirmations**

After entering into any Murabaha Contract orally, electronically or by other means pursuant to Clause 2.6 (*Murabaha Contract*) Party A shall confirm the details of the

relevant transaction, including details of the Commodities which have been sold and the terms of sale attached thereto, by sending an Offer Confirmation to Party B. The Offer Confirmation shall include the following details:

- (a) a general description of the Commodities;
- (b) the Cost Price;
- (c) the Settlement Date;
- (d) the agreed Deferred Payment Price (including the Murabaha Profit element);
- (e) the agreed Deferred Payment Date; and
- (f) the agreed settlement instructions.

2.4 Acceptance Confirmation

After receiving an Offer Confirmation from Party A with respect to a Murabaha Contract, Party B shall provide to Party A an executed Acceptance Confirmation.

2.5 Terms contained in the Offer Confirmation

The Parties agree that the Offer Confirmation and Acceptance Confirmation shall be exchanged on the same day. If there is any disagreement, the Parties shall attempt in good faith to resolve the matter and any electronic or other records or recording of the telephone conversations of the transaction maintained by Party B shall be conclusive evidence of the transaction details unless proven otherwise.

2.6 Murabaha Contract

- (a) The Parties intend and agree that they are legally bound by the terms agreed orally, electronically or by other means and that when such agreement is reached a Murabaha Contract shall be created between Party A and Party B upon the terms agreed.
- (b) The Parties acknowledge and agree that delivery of the Commodities comprised in a Murabaha Contract shall take place immediately after the formation of the Murabaha Contract, whereupon title and risk in the Commodities shall immediately pass together with all rights and obligations relating thereto on the Settlement Date and shall be evidenced by the Supplier debiting and crediting the relevant commodity accounts held by the Parties with the Supplier. The Parties agree that if Party B requests physical delivery of the Commodities, Party A will use reasonable endeavours to facilitate the delivery, provided that any delivery costs incurred in respect of Commodities stored outside Party A's own storage facilities shall be payable by Party B.

3. PAYMENTS TO PARTY A

3.1 Payment of Deferred Payment Price

Subject to the terms of this Agreement, on the Deferred Payment Date Party B shall pay to Party A the Deferred Payment Price applicable to that Murabaha Contract.

3.2 Currency

On each date on which an amount is due from Party B pursuant to this Agreement, Party B shall make the same available to Party A by payment in the currency specified in the relevant Offer Confirmation in immediately available funds to such account of Party A as Party A may specify in the relevant Offer Confirmation.

4. **TERMS APPLICABLE TO THE PURCHASE AND SALE OF COMMODITIES**

4.1 **Terms of Sale**

The Commodities comprised in the Murabaha Contract shall, other than the payment of the purchase price (which shall be on a deferred basis), be sold by Party A to Party B upon terms identical to those applicable to the sale of the same Commodities by the relevant Supplier to Party A or (as applicable) Party B acting as buying agent for Party

A. The Commodities comprised in any Murabaha Contract shall be sold on an “as-is, where-is” basis.

4.2 **No Warranty or Representation**

Party A shall not be deemed to give to Party B any warranty or representation whatsoever relating to the Commodities whether arising by implication, by law or otherwise and without prejudice to the generality of the foregoing any such warranty or representation is hereby expressly excluded to the extent permitted by law.

4.3 **Documentation**

If Party B does not act as buying agent for Party A, Party A shall, upon the written request of Party B, supply Party B with copies of any documentation evidencing the fact that, before the formation of a particular Murabaha Contract, Party A had purchased and become the owner of the Commodities with good and marketable title, free from all encumbrances and liens, to the Commodities which it sold to Party B under that Murabaha Contract.

5. **PREPAYMENT**

5.1 **Prepayment Request**

Party A may, at any time during which a Murabaha Contract is outstanding, request Party B to prepay any outstanding Deferred Payment Price (a "**Prepayment Request**"), provided always that Party B shall not be under any obligation whatsoever to take any action in relation to such Prepayment Request.

5.2 **Acceptance of Prepayment Request**

Upon receiving a Prepayment Request, Party B may elect, in its sole discretion, whether to prepay a Deferred Payment Price and shall, in any event, notify Party A of its decision within five (5) Business Days of receiving a Prepayment Request (failing which the Prepayment Request shall be deemed to have been rejected by Party B).

5.3 **Rebate Grant**

The Parties may agree, at the time of any Prepayment Request, whether any rebate of Murabaha Profit (relating to the relevant Murabaha Contract) is applicable in relation to a Deferred Payment Price to be prepaid pursuant to a Prepayment Request, provided always that the amount of any rebate shall be at the sole discretion of Party A.

6. **LATE PAYMENT AMOUNT**

6.1 **Late Payment Amount**

If any sum due and payable by a Party (the "**Paying Party**") under the terms of this Agreement is not paid to the other Party (the "**Affected Party**") on the due date (the "**Due Date**"), a late payment amount (the "**Late Payment Amount**") shall be payable on such amount as calculated in accordance with Clause 6.2 (*Calculation of Late Payment Amount*) below.

- (i) For the purposes of Clause 6.2 (*Calculation of Late Payment Amount*) below the unpaid amount due from the Paying Party shall be called the "**Unpaid Sum**"; and
- (ii) the period beginning on the Due Date and ending on the date upon which the obligation of the Paying Party to pay the Unpaid Sum is discharged in full shall be called the "**Applicable Period**".

6.2 **Calculation of Late Payment Amount**

- (a) The Late Payment Amount shall be an amount equal to the Unpaid Sum multiplied by the sum of:

- (A) the Relevant Interbank Market Rate for the Applicable Period expressed as a percentage per annum; plus
- (B) Two (2) per cent,

multiplied further by the number of days in such Applicable Period and divided by three hundred and sixty (360).

- (b) If the Applicable Period exceeds one week it shall be deemed to be divided into successive sub-periods, each of which (other than the first, which shall be for a period of seven (7) days commencing on the Due Date) shall start on the last day of the preceding such period and the duration of which shall be selected by the Affected Party. The Late Payment Amount shall be calculated for each such sub-period as if the references to Applicable Period above were references to such sub-period and shall be payable at the end of each such sub-period.

6.3 **Payment of Late Payment Amount**

Any Late Payment Amount received by the Affected Party shall be used to pay any actual costs and expenses incurred by it as a result of the late payment of the Unpaid Sum and the remaining amount (if any) shall be donated by the Affected Party (on behalf of the Paying Party) to such registered charitable foundation as the Affected Party under supervision of its Shari'ah board supervisor may select in its absolute discretion.

7. **REPRESENTATIONS**

Each Party makes the representations and warranties set out in this Clause 7 (*Representations*) to the other Party on the date of this Agreement.

7.1 **Status**

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

- (b) It has the power to own its assets and carry on its business as it is being conducted.

7.2 Binding obligations

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations (subject to any general principles of law limiting its obligations).

7.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

7.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.

7.5 Validity and admissibility in evidence All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement; and
 - (b) to make this Agreement admissible in evidence in its jurisdiction of incorporation,
- have been obtained or effected and are in full force and effect.

7.6 Governing law and enforcement

- (a) The choice of English law as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation; and
- (b) Any judgment obtained in the courts of England in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation.

7.7 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under this Agreement.

7.8 No filing or stamp taxes

Under the law of its jurisdiction of incorporation it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.

7.9 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Murabaha Contract.

- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

7.10 No misleading information

Any factual information provided was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

7.11 Pari passu ranking

Its payment obligations under this Agreement rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

7.12 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.

7.13 Compliance with Shari'ah

It has made its own investigation into and satisfied itself as to the Shari'ah compliance of this Agreement and each transaction entered into under it, and confirms that it does not have any objection, nor will it raise any objections as to matters of Shari'ah compliance in respect of or otherwise in relation to the provisions of this Agreement.

7.14 Non-Reliance

It has not relied on the other Party or any other written declaration, fatwa, opinion or other documents prepared by, on behalf or at the request of the other Party for the purposes of a determination or confirmation that this Agreement and each Murabaha Contract to be entered into under this Agreement is Shari'ah compliant.

7.15 No encumbrances

It has not created and will not create any charge or encumbrance, and has not granted and will not grant any third party rights, over its interest in the Commodities without the prior written approval of the other Party.

7.16 Repetition

The Repeating Representations are deemed to be made by each Party by reference to the facts and circumstances then existing on the date of each Acceptance Confirmation.

8. UNDERTAKINGS

The undertakings in this Clause 8 (*Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under this Agreement.

8.1 Authorisations

Each Party shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect;
- (b) if requested by the other Party, supply (subject to any confidentiality restrictions) a copy of the fatwa or any other assertion from its Shari'ah Board; and

- (c) if requested by the other Party, supply certified copies to the other Party of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Agreement.

8.2 **Compliance with laws**

Each Party shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Agreement.

8.3 **Information: miscellaneous**

Each Party shall supply to the other Party:

- (a) the audited financial statements dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched; and
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it, and which might, if adversely determined, have a Material Adverse Effect.

8.4 **Notification of default**

- (a) A defaulting Party shall notify the non-defaulting Party of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a request by the non-defaulting Party, the defaulting Party shall supply to the non-defaulting Party a certificate signed by two (2) of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

8.5 **"Know your customer" checks**

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement; or
- (b) any change in the status of a Party (the "**First Party**") after the date of this Agreement,

obliges the other Party (the "**Second Party**") to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the First Party shall promptly upon the request of the Second Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Second Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in this Agreement.

8.6 **FATCA information**

- (a) Subject to Clause 8.6 (c) (*FATCA information*) below, Party A shall, within ten business days of a reasonable request by Party B:
 - a. confirm to Party B whether it is a FATCA Exempt Party or not a FATCA Exempt Party;
 - b. supply to that Party B such forms, documentation and other information relating to its status under FATCA as Party B reasonably requests for the purposes of Party B's compliance with FATCA.
- (b) If Party A confirms to Party B pursuant to Clause 8.6 (a) (*FATCA information*) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, Party A shall notify Party B reasonably promptly.
- (c) Clause 8.6 (a) (*FATCA information*) above shall not oblige Party A to do anything, which would or might in its reasonable opinion constitute a breach of:
 - a. any law or regulation;
 - b. any duty of confidentiality; or
 - c. any fiduciary duty.
- (d) If Party A fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 8.6 (a) (*FATCA information*) above, then Party A shall be treated for the purposes of the Agreement (and payments under them) as if it is not a FATCA Exempt Party and Party B shall be entitled to terminate the Agreement with immediate effect starting three 3 days after the notification par e-mail.

9. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 9 (*Events of Default*) is an Event of Default.

9.1 **Non-payment**

A Party does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error which is not its fault; and
- (b) payment is made within three (3) Business Days of its due date.

9.2 **Other obligations**

- (a) A Party does not comply with any provision of this Agreement (other than the obligation referred to in Clause 9.1 (*Non-payment*)).
- (b) No Event of Default under Clause 9.2(a) (*Other obligations*) above will occur if the failure to comply is capable of remedy and is remedied within seven (7) Business Days of the earlier of (i) the non-defaulting Party giving notice to the defaulting Party and (ii) the defaulting Party becoming aware of the failure to comply.

9.3 **Misrepresentation**

Any representation or statement made or deemed to be made by a Party in this Agreement or any other document delivered by or on behalf of a Party under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made.

9.4 **Insolvency**

A Party is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

9.5 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Party;
- (b) a composition, compromise, assignment or arrangement with any creditor of a Party;
- (c) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, receiver, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of a Party or any of its assets; or
- (d) enforcement of any security over all or substantially all the assets of a Party, or any analogous procedure or step is taken in any jurisdiction.

10. **ACCELERATION**

On and at any time after the occurrence of an Event of Default which is continuing, the non-defaulting Party may by written notice to the other Party:

- (a) terminate this Agreement with immediate effect; and
- (b) where Party A is the non-defaulting Party, Party A may declare that all or part of the Deferred Payment Price be immediately due and payable, whereupon it shall become immediately due and payable.

11. **MISCELLANEOUS**

11.1 **Early Termination**

- (a) Subject to Clause 10(a) (*Acceleration*) and 11.1(b) (*Early Termination*), if at any time during the term of this Agreement, a Party wishes to terminate this Agreement, it may do so by giving the other Party written notice of not less than thirty (30) Business Days, following which this Agreement shall terminate.
- (b) Notwithstanding the termination of this Agreement pursuant to Clause 11.1(a) (*Early Termination*), the Parties shall remain obligated in respect of the Murabaha Contracts that have been proposed and accepted and which are outstanding at the date of the written notice of termination.

11.2 **Illegality**

If it becomes unlawful in any jurisdiction for a Party to perform any of its obligations as contemplated by this Agreement:

- (a) that Party shall promptly notify the other Party upon becoming aware of that event; and
- (b) Party B shall pay to Party A such proportion of the Deferred Payment Price as may be agreed between the Parties at such time (provided always that such amount shall be no less than the Cost Price portion of the Deferred Payment Price) on the date specified by Party A (being no earlier than the last day of any applicable grace period permitted by law).

11.3 **Tax**

- (a) No Party wishes to enter into any Murabaha Contract to which any value added Tax or other similar Tax ("**VAT**") is applicable and the Parties will not propose such transactions.
- (b) All payments to be made by a Party to another Party under this Agreement shall be made without deduction for and free from any present or future Taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature imposed, levied, collected or assessed by any taxing authority (other than Taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions on the transfer of the Commodities from the Supplier to Party A or (as applicable) to Party B acting as buying agent for Party A) unless a Party (the "**Withholding Party**") is compelled by law to make any such deduction or withholding. In that event, the Withholding Party shall (i) ensure that such deduction or withholding is made within the time allowed and in the minimum amount required by law and (ii) within thirty (30) days of any such deduction or withholding or any payment required in connection with that deduction or withholding, supply evidence reasonably satisfactory thereof to the other Party.
- (c) Where the Withholding Party is Party A, it shall in addition pay such further amounts as may be necessary in order that the net amounts received by Party B after such deduction or withholding shall equal the amounts which would have been received by Party B in the absence of such deduction or withholding. For the avoidance of doubt, where Party B is the Withholding Party, any payment to Party A shall be made less any deduction or withholding and Party B shall be under no obligation to pay any further amounts to Party A to compensate Party A for any deduction or withholding made.
- (d) All amounts payable under this Agreement by a Party which (in whole or in part) constitute the consideration for the purposes of VAT shall be deemed to be exclusive of any VAT which is chargeable on such supply, and such Party shall pay (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (if any) charged thereon.

11.4 **FATCA Deduction**

- (a) Notwithstanding anything to the contrary in this Agreement, either Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and the relevant Party shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) The relevant Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the other Party thereof.

11.5 **Commodity Indemnity**

Party A shall indemnify and hold harmless Party B for any and all obligations, liabilities, losses, costs, claims, expenses, fees (including legal fees and expenses), damages, penalties, demands, actions and judgments of every kind and nature imposed on, incurred by, or asserted against Party B (in each case, without duplication) arising in connection with or relating to any breach by Party A of the provisions of Clauses 4.1 (*Terms of Sale*) and 4.3 (*Documentation*), unless such actions, proceedings, claims, costs, demands and expenses are caused due to gross negligence or wilful misconduct of the other Party.

11.6 **Currency of Payment**

Each payment in respect of actual costs, expenses or Taxes shall be made in the currency in which such costs, expenses or Taxes are incurred. Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency to an account of the relevant Party, in the principal financial centre of such currency.

If any sum due from a Party under this Agreement (“**Sum**”) or any order or judgment given or made in relation to a Sum has to be converted from the currency (the “**First Currency**”) in which the Sum is payable into another currency (the “**Second Currency**”) for the purpose of (i) making or filing a claim or proof against a Party (ii) obtaining an order or judgment in any court or other tribunal or (iii) enforcing any order or judgment given or made in relation hereto, the Parties shall as an independent obligation indemnify and hold harmless each other from and against any actual loss suffered as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert the Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which one of the Parties may in the ordinary course of business purchase the First Currency with the Second Currency upon receipt by it of the Sum.

11.7 **Payments**

- (a) If any payment due from a Party falls on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day except where the next succeeding Business Day falls in the next calendar Month, in which event the payment shall be due and shall be made on the immediately preceding Business Day.
- (b) Payment of the Deferred Payment Price in respect of a Murabaha Contract by Party B to Party A shall be made on the Deferred Payment Date and to an account specified by Party A in the relevant Offer Confirmation.

- (c) Subject to Clause 11.3 (*Tax*), all sums payable by either Party under this Agreement and under each Murabaha Contract shall be made in full, without any set-off or counterclaim whatsoever.

11.8 **Costs and Expenses**

- (a) Each Party acknowledges and accepts that it shall bear its own costs and expenses incurred in connection with the preparation of this Agreement.
- (b) Party B further acknowledges and accepts that the Deferred Payment Price shall not include costs associated with delivery of the Commodities where Party B has requested physical delivery in accordance with Clause 2.6(b) (*Murabaha Contract*) and, for the avoidance of doubt, any such delivery costs properly incurred by Party A shall be for the account of Party B.

11.9 **Mitigation**

If circumstances arise which would, or would upon the giving of notice, result in:

- (a) Party B being required to prepay the Deferred Payment Price pursuant to Clause 11.2 (*Illegality*); or
- (b) Party B being required to make a payment or an increased payment to Party A pursuant to Clause 11.3 (*Tax*),

then, without in any way limiting, reducing or otherwise qualifying the obligations of Party B under Clauses 11.2 (*Illegality*) and 11.3 (*Tax*), Party B shall, in consultation with Party A, endeavour to take such reasonable steps as may be open to it to mitigate or remove such circumstances.

11.10 **Assignments and/or transfers**

The parties may not transfer their rights and obligations without the written consent of the other party, except that a party may transfer all of its rights and obligations without consent to a successor pursuant to a consolidation, amalgamation or merger or a transfer of all or substantially all of its assets, or otherwise by operation of law (whether governing law or the laws of a party's jurisdiction of organisation).

11.11 **Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

11.12 **Entire Agreement**

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Each of the Parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a Party for fraud.

11.13 **Remedies And Waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

11.14 Amendments

Any amendment to any of the terms or conditions of this Agreement shall be in writing and signed by both Parties.

11.15 Counterparts

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

11.16 Notices

- (a) Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, email or letter.
- (b) The address, email and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name below or any substitute address, email or fax number or department or officer as the Party may notify to the other by not less than five (5) Business Days' notice.

Party A:

Address:

Fax:

Tel:

Email:

Attention:

Party B:

Address:

Fax:

Tel:

Email:

Attention:

- (c) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
 - (i) if by way of fax, when received in legible form provided that such communication is made from the fax number specified in Clause 11.16(b) (*Notices*) above of the relevant Party or, if made from a different fax number, upon receipt of an email confirmation from the Party delivering such communication to the other Party that such communication has been sent by fax;

- (ii) if by way of letter, when it has been left at the relevant address provided such delivery was by way of an internationally reputable courier company which retains proof of delivery; or
- (iii) if by way of email, when received in legible form provided that such communication is made from the email address specified in Clause 11.16(b) (*Notices*) above of the relevant Party,

and, if a particular department or officer is specified as part of its address details provided under Clause 11.16 (*Notices*), if addressed to that department or officer.

11.17 **and English language**

- (a) This Agreement has been executed in the English language.
- (b) Any notice given or documents provided under or in connection with this Agreement must be in English.

11.18 **Reliance on Communication**

A Party (the "**Receiving Party**") is authorised to act without further enquiry upon any instruction or communication received in accordance with Clause 11.16 (*Notices*) and/or in accordance with Clause 2 (*Murabaha Contract*) which it reasonably believes in good faith to be an instruction or communication given or made by the other Party (the "**Delivering Party**") or any person authorised by the Delivering Party to give instructions or make other communications on its behalf and is entitled to treat any such instruction or communication as fully authorised by and binding upon the Delivering Party. The Delivering Party shall indemnify the Receiving Party and its officers, directors, employees, representatives and agents from and against any cost, claim, loss, expense (including legal fees) or liability together with any VAT thereon which any of them may reasonably incur or sustain by reason of having acted upon any such instruction or communication.

11.19 **Disclosure of Confidential Information**

- (a) Subject to any express agreements between the Parties, each Party will treat as confidential all information relating to the other Party and to any transaction

entered into (or any contemplated transaction) under this Agreement and/or any other information relating thereto ("**Confidential Information**"). Each Party agree that the other Party may disclose Confidential Information to:

- (i) any Affiliate, Subsidiary or Holding Company of the Parties or their officers, directors, employees, professional advisers, auditors, agents or third party service providers as they shall consider appropriate;
- (ii) anyone to whom may discuss hedging or divesting of the Party's exposures (by reference to a transaction entered into (or contemplated transaction) under this Agreement or on a portfolio basis) for credit or other hedging purposes or for capital relief;
- (iii) anyone to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, treasury, taxation or other regulatory authority or similar body, the rules

of any exchange or pursuant to any applicable law in a relevant jurisdiction;

- (iv) anyone to whom may disclose information in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (v) third parties in other circumstances with the other Party prior written consent; or
 - (vi) any trade repository, clearing house, authority, body or agency to the extent required or permitted by any applicable law in a relevant jurisdiction which mandates reporting and/or retention of transaction and similar information or to the extent required by any applicable law in a relevant jurisdiction regarding reporting and/or retention of transaction and similar information in accordance with which the other party is required or accustomed to act.
- (b) Any information which: (i) was already in the other Party's possession prior to receipt from it ; (ii) was or becomes available in the public domain other than as a result of disclosure in breach of its confidentiality obligations in Clause 11.18(a) above; (iii) is provided to the Party by a third party whom may not be under an obligation of confidentiality to such Party; or (iv) was or is independently developed by any Party, is not Confidential Information.

12. **GOVERNING LAW**

12.1 **English Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed, interpreted and applied in accordance with English law.

12.2 **Waiver of Interest**

Notwithstanding the provisions of Clause 12.1 (*English Law*) hereof, the Parties recognise and agree that the principle of the payment of interest/usury is repugnant to *Shari'ah* and accordingly to the extent that any legal system would but for the provisions of this clause, impose whether by contract or by statute an obligation to pay interest/usury or a sum in the nature of interest/usury, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover from the other interest/usury or sum in the nature of interest/usury.

13. **ENFORCEMENT**

13.1 **Arbitration**

- (a) Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any question regarding its existence, validity, interpretation, performance or termination, shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (for the purpose of this Clause 13.1 the "**Rules**").

- (b) The Rules are incorporated by reference into this Clause 13.1 and capitalised terms used in this Clause 13.1 which are not otherwise defined in this Agreement, have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. Party A shall nominate one arbitrator for appointment by the LCIA Court. Party B shall nominate one arbitrator for appointment by the LCIA Court. The LCIA Court shall appoint the chairman. If, within 30 days of the Request for Arbitration being sent to the LCIA Registrar, (i) Party A does not make a nomination for an arbitrator or (ii) Party B does not make a nomination for an arbitrator, the LCIA Court shall appoint such arbitrator.
- (d) The seat, or legal place of arbitration, shall be London. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or if in another language, accompanied by an English translation.
- (e) Service of any Request for Arbitration made pursuant to this Clause 13.1 must be by courier at the address given for the sending of notices in this Agreement.
- (f) Except as may be required by law, neither Parties may disclose the existence, content or results of any arbitration hereunder.

13.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law:

[REDACTED]

- (ii) Party B irrevocably appoints [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (iii) both Parties agree that failure by a process agent to notify the relevant Party of the process will not invalidate the proceedings concerned.

- (b) If the appointment of an agent for service of process pursuant to Clauses 13.2 (a) (i) (*Service Of Process*)(**Error! Reference source not found.**) and/or 13.2 (a) (i) (*Service Of Process*) above ceases, for any reason, to be effective, such Party (the "**Affected Party**") shall immediately (and in any event no later than twenty four (24) hours thereafter) appoint another person in England to accept service on its behalf in England. If the Affected Party fails to do so (and such failure continues for a period of not less than fourteen (14) days), the other Party shall be entitled to appoint such a person by notice to the Affected Party.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed on the day and year first above written.

SCHEDULE 1 FORM OF PURCHASE INSTRUCTION CONFIRMATION AND ACKNOWLEDGEMENT

PART I

Purchase Instruction Confirmation

Date: []

From: [] (as **Party A**)

To: []
(as **Party B**)

Master Murabaha Agreement dated [] (the "Murabaha Agreement")

1. We refer to the above Murabaha Agreement (expressions defined in which have the same meanings herein).
2. Following the exchange between us (orally, electronically or by other means), we hereby write to confirm our intention to [purchase from the Supplier/instruct our agent to purchase]¹ and on-sell to you the following Commodities:
 - (a) [Quantity]² and general description of Commodities: []
 - (b) Cost Price: [()]³
 - (c) Settlement Date []
3. By signing the Acknowledgement attached hereto, you confirm your undertaking to purchase the Commodities from us pursuant to a Murabaha Contract to be entered into in accordance with Clauses 2.2 (*Formation of a Murabaha Contract*) and 2.6 (*Murabaha Contract*) of the Murabaha Agreement.
4. This Purchase Instruction Confirmation and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

Yours faithfully

..... authorised
signatory for

[]

¹ Please delete as applicable.

² Please delete reference to "Quantity" if not known on the date and/or at the time on which the Purchase Instruction Confirmation is submitted.

³ Insert currency and amount as applicable, both in figures and words.

PART II

Acknowledgement

Date: []

Reference: [•]

From [REDACTED]
BRANCH (as Party B)

To: [REDACTED] (as Party A)

**Master Murabaha Agreement dated (the "Murabaha Agreement") and Purchase
Instruction Confirmation dated (the "Purchase Instruction Confirmation")**

1. We refer to the Murabaha Agreement and the Purchase Instruction Confirmation. Expressions defined in the Murabaha Agreement shall have the same meaning when used in this Acknowledgment.
2. We hereby undertake to purchase the Commodities from you pursuant to a Murabaha Contract to be entered into in accordance with Clauses 2.3 (*Transaction Details Confirmations*), 2.4 (*Acceptance Confirmation*) and 2.6 (*Murabaha Contract*) of the Murabaha Agreement.
3. We acknowledge that you will purchase the Commodities in reliance upon such undertaking and that you may incur losses, damages and other liabilities if we fail to purchase such Commodities from you in accordance with the Murabaha Contract and we undertake to indemnify you against any actual direct loss resulting from our failure to comply with this undertaking.
4. This Acknowledgement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

..... authorised

signatory for

C [REDACTED]

SCHEDULE 2 FORM OF OFFER CONFIRMATION

Date: []

From: [REDACTED] (as **Party A**)

To [REDACTED]
(as **Party B**)

Master Murabaha Agreement dated [REDACTED] (the "Murabaha Agreement")

1. We refer to the above Murabaha Agreement (expressions defined in which have the same meanings herein).
2. In accordance with the terms and conditions set out in the Murabaha Agreement, we hereby confirm the details of the Murabaha Contract that we have entered into with you and under which we sold you the Commodities [which you purchased from the Supplier as our buying agent][which we purchased from the Supplier]⁴ on the following terms:
 - (a) Reference: [•]
 - (b) Quantity and general description of Commodities: [(□)⁵]
 - (c) Cost Price: [(□)]⁶
 - (d) Settlement Date: [□]
 - (e) Murabaha Profit: [(□)]⁷
 - (f) Deferred Payment Price: [(□)]⁸
 - (g) Deferred Payment Date: [□]
 - (h) [Delivery date and place of delivery: [□]⁹]
 - (i) Account details for payment of Deferred Payment Price: [□]
3. The Commodities were sold to you by us without any representation or warranty and any representation or warranty is expressly excluded to the extent permitted by law.
4. We hereby represent that no Default has occurred or is continuing and each Repeating Representation is true as of the date hereof and on the Settlement Date.

⁴ To be deleted as applicable.

⁵ Insert in both figures and words.

⁶ Insert currency and amount as applicable, both in figures and words.

⁷ Insert currency and amount as applicable, both in figures and words.

⁸ Insert currency and amount as applicable, both in figures and words.

⁹ To be used where physical delivery is required.

5. We hereby acknowledge that our commodity account held with the relevant Supplier will be debited with the quantity of the Commodities sold pursuant to this Murabaha Contract.
6. Please confirm that you agree that this Offer Confirmation correctly reflects the terms of the Murabaha Contract, by sending us a duly executed copy of the Acceptance Confirmation.
7. This letter and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

Yours faithfully

..... authorised
signatory for

[Redacted signature block]

SCHEDULE 3 FORM OF ACCEPTANCE CONFIRMATION

Date: []

Reference: [•]

From: [REDACTED]
[REDACTED] (as **Party B**)

To: [REDACTED] (as **Party A**)

**Master Murabaha Agreement dated [] (the "Murabaha Agreement") and Offer
Confirmation dated []**

1. We refer to the above Murabaha Agreement (expressions defined in which have the same meanings herein) and the Offer Confirmation issued by you pursuant thereto.
2. We confirm that we agree that the Offer Confirmation correctly reflects the terms of the Murabaha Contract that we have entered into.
3. This letter and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

Yours faithfully

..... authorised
signatory for

[REDACTED]

SIGNATURES

For and on behalf [REDACTED] (as **Party A**)

Authorised Signature:

For and on behalf of [REDACTED] (as **Party B**)

Authorised Signature:

